

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Progressive West Insurance Company, an Ohio Corporation

vs

Bun Bun Tran, Leonel Arrellano

SUMMONS IN A CIVIL ACTION

Case No. **07 CV 1999 JAH (POR)**
 ON COMPLAINT FOR DECLARATORY
 RELIEF

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

James R. Robie,
 Robie & Matthai
 500 South Grand Avenue, Suite 1500,
 Los Angeles, CA 90071

An answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

OCT 16 2007

W. Samuel Hamrick, Jr.

CLERK

P. DEL CRUZ

By

, Deputy Clerk

DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me	DATE
NAME OF SERVER	TITLE
Check one box below to indicate appropriate method of service	

Served personally upon the defendant. Place where served: _____

Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein:

Name of person with whom the summons and complaint were left: _____

Return unexecuted: _____

Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL		SERVICES	TOTAL	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.

Executed on: _____ Date _____ Signature of Server _____

Address of Server _____

NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE

IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON THE CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.

YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.

JUDGMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE, SBN 67303
KYLE KVETON, SBN 110805
RONALD P. FUNNELL, SBN 209897
500 South Grand Avenue, 15th Floor
Los Angeles, California 90071
(213) 706-8000 • (213) 624-2563 Fax
kkyeton@romalaw.com

ED

07 OCT 16 PM 1:39

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

DEPUTY

Attnorneys for Plaintiff PROGRESSIVE WEST
INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PROGRESSIVE WEST INSURANCE
COMPANY, an Ohio corporation.

'07 CV 1999 JAH (POR)
CASE NO.:

**COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiff,
, LEONEL
Defendants.

BUN BUN TRAN, LEONEL
ARRELLANO,

Defendants.

Plaintiff Progressive West Insurance Company (“Progressive”) alleges:

1. Plaintiff is and was at all times mentioned a corporation incorporated under the laws of the State of Ohio and having its principal place of business in the State of Ohio

2. Defendant Bun Bun Tran ("Mr. Tran") is and was at all times mentioned an individual residing in the State of California, County of San Diego.

3. Defendant Leonel Arrellano ("Mr. Arrellano") is and was at all times mentioned an individual residing in the State of California.

4. The jurisdiction of this Court over the subject matter of this action is predicted on 28 U.S.C § 1332. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining the amount in controversy for

1 jurisdictional purposes, general, special, and punitive damages are to be considered if
 2 recoverable. *See, e.g., Watson v. Blankinship*, 20 F.3d 383, 386-87 (10th Cir. 1994);
 3 *Smith v. Bally's Holiday*, 843 F. Supp. 1451 (N.D. Ga. 1994); *Srour v. Barnes*, 670
 4 F.Supp. 18 (D.D.C. 1987). Based on the facts alleged below, it is legally certain that
 5 defendant's claim against Progressive exceeds \$75,000.00. Therefore, although
 6 Progressive disputes liability, Progressive asserts that the amount in controversy
 7 exceeds \$75,000.00 and that this Court has jurisdiction over this action.

8 5. Venue is proper, as the Southern District of California is the district in
 9 which a substantial part of the events or omissions on which the claim is based
 10 occurred.

11 6. For the policy period May 30, 2006 to November 30, 2006, plaintiff
 12 Progressive insured defendant Leonel Arrellano ("Mr. Arrellano") under California
 13 Motor Vehicle Policy number 16558999-00. The policy contained a per-person
 14 bodily injury liability limit of \$15,000.

15 7. On November 18, 2006, at 1:05 a.m., defendant Bun Bun Tran was
 16 driving his automobile eastbound on Juniper Street in the City of San Diego.

17 8. At the same time, Defendant Mr. Arrellano was driving his pickup truck
 18 south bound on Commonwealth Avenue in the City of San Diego.

19 9. Mr. Arrellano's pickup truck collided with Mr. Tran's automobile. The
 20 subsequent traffic collision report assigned fault to Mr. Arrellano for disregarding a
 21 stop sign.

22 10. As a result of the collision, Mr. Tran suffered serious injuries including
 23 head trauma described as a subarachnoid hemorrhage and a ruptured spleen. Mr.
 24 Tran reportedly remains comatose.

25 11. Mr. Tran's medical bills are believed to be in excess of \$700,000.00.

26 12. Following the accident, Mr. Arrellano was arrested by the San Diego
 27 Police Department for driving under the influence of alcohol, driving without a
 28 licence and leaving the scene of an accident. In February 2007, Mr. Arrellano pled

1 guilty to violation of Vehicle Code §20001(a) (leaving scene of an accident) and
 2 §23153(b) (driving under the influence of alcohol and causing bodily injury to
 3 another.) Mr. Arrellano remained in the San Diego County Jail until June 2007, when
 4 he was sentenced to 6 years in a California prison.

5 13. On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote
 6 Progressive demanding that Progressive tender its liability policy limits within fifteen
 7 (15) days. A copy of attorney Nguyen's demand letter is attached as Exhibit 1.

8 14. Plaintiff is informed and believes that at the time Attorney Nguyen sent
 9 his January 26, 2007 letter, he was not legally representing Bun Bun Tran, but,
 10 instead, was representing Mr. Tran's mother. Plaintiff is further informed and
 11 believes that Mr. Tran's mother was not then guardian ad litem of Mr. Tran. As a
 12 result, Attorney Nguyen had no legal authority to settle the claims of Mr. Tran, nor
 13 did he have legal authority to release claims of Mr. Tran against any tort feasor.

14 15. Attorney Nguyen's demand did not offer a release or dismissal in
 15 exchange for payment of the insurance benefits, and, indeed, it specifically was
 16 subject to the condition precedent "of convincing me [Nguyen] that there are no other
 17 responsible parties, whether insured or not, causing this accident. If I am convinced,
 18 I will state as much in a letter. If I am not convinced, I will never state as much in a
 19 letter and there will be no settlement."

20 16. It was legally and factually impossible to convince Attorney Nguyen that
 21 there were no other responsible parties for causing this accident, given the facts and
 22 circumstances of the accident, and that Patricia Cole in fact paid Bun Bun Tran
 23 \$300,000 to settle the liability claim against her arising from this accident in July
 24 2007.

25 17. As a result of the above condition precedent, attorney Nguyen's demand
 26 was not an offer to settle within the policy's limits. Rather, the condition precedent
 27 of "convincing" Nguyen was outside of the policy and its stated limits.

28 18. In response to attorney Nguyen's letter, Progressive offered its policy

1 limits on February 2, 2007, within seven days of the demand. Attorney Nguyen
 2 rejected the offer and referred Mr. Tran's claim to attorney Christopher Angelo.

3 19. On or about May 8, 2007, attorney Angelo filed a lawsuit on behalf of
 4 Mr. Tran (through his guardian ad litem, Le Thi Nguyen), entitled *Bun Bun Tran vs.*
 5 *Arrellano, et al.*, San Diego Superior Court Case No. 37-2007-00065432-CU-PA-
 6 CTL. The complaint alleges causes of action for negligence and negligence per se
 7 against Mr. Arrellano.

8 20. The correspondence, pleadings and discovery proceedings in the above
 9 captioned lawsuit make clear that attorney Angelo intends to obtain a judgment
 10 against Mr. Arrellano and then sue Progressive on behalf of Mr. Tran for breach of
 11 contract and breach of the implied covenant of good faith and fair dealing for failure
 12 to settle Mr. Tran's claim within policy limits.

13 21. Attorney Angelo has accused Progressive of misconduct and claims that
 14 Progressive's failure to accept Attorney Nguyen's January 26, 2007 policy limits
 15 demand has eliminated the stated limits of the policy. As a result of the erroneous
 16 contention that Progressive has "taken the lid off its policy" by not accepting
 17 Attorney Nguyen's conditional demand of January 26, 2007, Mr. Tran claims, *inter*
 18 *alia*, that a conflict of interest has arisen between Progressive's defense counsel and
 19 Mr. Arrellano, that Mr. Arrellano should stipulate to a multi-million dollar judgment
 20 and that Progressive should bear liability for these extracontractual claims. A copy of
 21 the letter of June 28, 2007, from Mr. Tran's attorney is here attached as Exhibit 2.
 22 Progressive denies and disputes these allegations and contends it has not rejected a
 23 settlement within policy limits which would lead to such consequences claimed by
 24 defendant Mr. Tran.

25 22. An actual controversy has arisen and now exists between the parties
 26 relating to the legal rights and duties of plaintiff and defendants under the involved
 27 policy of insurance, for which plaintiff desires a declaration of rights.

28 23. A declaratory judgment is necessary in that plaintiff contends it

1 discharged its obligations under the insurance policy and in accord with California
2 law and that its conduct in response to the letter of attorney Nguyen (Exhibit 1) did
3 not eliminate or jeopardize the \$15,000 policy limits available on the contract at
4 issue.

5
6 Wherefore, plaintiff prays for a declaratory judgment against defendants as
7 follows:

- 8 1. That the Court declare the respective rights and duties of plaintiff and
9 defendants under the involved policy of insurance;
10 2. That plaintiff be awarded its costs, expenses and attorney fees incurred
11 herein; and
12 3. For other such relief as the Court deems just and proper.

13
14 DATED: October 15, 2007

ROBIE & MATTHAI
A Professional Corporation

15
16 By:
17

18 JAMES R. ROBIE
19 KYLE KVETON
RONALD P. FUNNELL
20 Attorneys for Plaintiff PROGRESSIVE WEST
INSURANCE COMPANY
21
22
23
24
25
26
27
28

EXHIBIT 1

LAW OFFICES OF
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

SAN GABRIEL
105 E. LAS TUNAS DRIVE
SAN GABRIEL, CA 91770
PHONE: (626) 286-2239

SAN DIEGO
4745 EL CAJON BLVD., SUITE 101
SAN DIEGO, CA 92126
PHONE: (619) 284-0800

15622 BROOKHURST STREET
WESTMINSTER, CALIFORNIA 92683

PHONE: (714) 531-8181
FAX: (714) 531-9397

RESPOND TO:

- WESTMINSTER OFFICE
- SAN GABRIEL OFFICE
- SAN DIEGO

January 26, 2007

Tiara Foster, Claims Representative
Progressive Insurance Company
6131 Orangethorpe Avenue, Suite 300
Buena Park, CA 90620
714.736.6300 general phone
714.736.6321 direct
714.736.6308 fax

Via Certified Mail with Return Receipt
and Fax to: (714)736-6308

Re:	My Client:	Bun Bun Tran
	Your Insured/Defendant:	Leonel Arrellano
	Date of Accident:	November 18, 2006
	Your Claim No.:	060409287

Dear Ms. Foster:

Please be advised that I represent Bun Bun Tran, who was seriously injured because of your insured running a stop sign. Thereafter, your insured fled from the scene. He has been arrested and is currently awaiting a criminal hearing in February of this year. My client has been hospitalized at UC San Diego, Floor 8 East, Room 812A, in a comatose condition since November 18, 2006. I understand that you have learned about his condition and the facts behind this accident from Esurance, the auto insurance company of Bun Bun Tran. You therefore know that the medical expenses are approaching \$700,000 and Progressive has insufficient amounts of liability insurance.

My client is represented by his mother/guardian, Le Thi Nguyen. My client is hereby willing to be responsible for any and all medical and other liens so long as Progressive tenders all of its liability limits within 15 days from the date of this letter subject to the further condition precedent of convincing me that there are no other responsible parties, whether insured or not, causing this accident. If I am convinced, I will state as much in a letter. If I am not convinced, I will never state as much in a letter and there will be no settlement. Please also tell me, since it may bear on settlement, whether or not your insured received liquor at a Chili's restaurant shortly before the accident, and if so, which Chili's restaurant. We understand that Chili's was your insured's employer at the time of the accident.

Very truly yours,

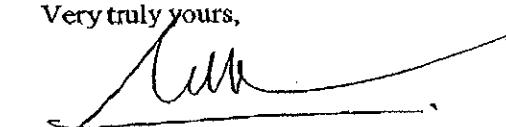

Anh Q. D. Nguyen

EXHIBIT 2

P2108
J.D.

CHRISTOPHER E. ANGELO
JOSEPH DI MONDA, A.L.A.

ANGELO & DI MONDA
A LIMITED LIABILITY PARTNERSHIP
1721 NORTH SEPULVEDA BOULEVARD
MANHATTAN BEACH, CALIFORNIA 90266

TELEPHONE: (310) 939-0000
FACSIMILE: (310) 939-0025

June 28, 2007

James O. McLaughlin
Winet, Patrick & Weaver
401 West A Street, Suite 1400
San Diego, CA 92101
619.702.3902
619.702.5432 fax

Re: *Bun Bun Tran v. Leonel Arrellano, et al.*
Your File No. P21084

Dear Mr. McLaughlin:

I assume that you have requested and reviewed all correspondence exchanged between the two claims adjusters from Progressive and the law office of Anh Nguyen. Pursuant to that review by you, I assume you and your primary client, Mr. Arrellano, are ready to consider demanding certain settlement parameters, as follows:

1. Leonel Arrellano and his liability insurer, Progressive, stipulate to Arrellano's liability and as to the amount of reasonable damages (assuming a reasonable stipulation) relative to the above matter.
2. In exchange, my client agrees not to execute any judgment against Mr. Arrellano, so long as Progressive consents to this arrangement without any reservation. Future wrongful death claims will also be waived.
3. Progressive agrees to pay the entirety of that stipulated judgment, subject to any offset or reimbursement from cross-complaint recoveries achieved by your firm against the City of San Diego and/or Chili's Grill & Bar.
4. You will not have the benefit of any cross-complaint recovery against co-defendant Patricia Cole because a settlement has been achieved between attorney Anh Nguyen and First American in light of their very professional conduct.

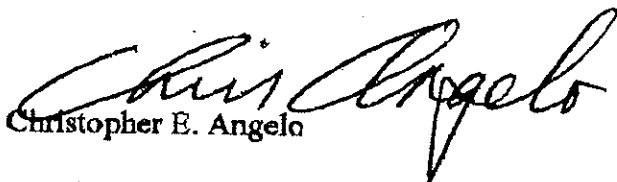
JUL 02 2007

ANGELO & DI MONDA
A LIMITED LIABILITY PARTNERSHIP

I am open to any other parameters suggested by you in writing. The parameters suggested by me in this letter will remain open for the next 30 days, at which time all settlement negotiations will be withdrawn.

Very truly yours,

ANGELO & DI MONDA, LLP


Christopher E. Angelo

CEA/csh

11/06/2007 13:34 2095326180 Robie & Matthai James Robie, 67303 500 S. Grand Ave., 15th Floor Los Angeles, CA 90071-2614		MONAGHAN ATTN: SVCS TELEPHONE NO.: (213) 624-3062		PAGE 05
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. Progressive		FOR COURT USE ONLY
Insert name of court, judicial district or branch court, if any: UNITED STATES DISTRICT COURT SOUTHERN DISTRICT				
PLAINTIFF: Progressive West Ins. Co.				
DEFENDANT: Bun Bun Tran, et al.,				
PROOF OF SERVICE	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 07CV 1999 JAH (POR)

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

Summons, Complaint, Civil Cover Sheet, Certificate & Notice of Interested Parties

PARTY SERVED: Leonel Arrellano, Inmate #F77654

DATE & TIME OF DELIVERY:

**ADDRESS, CITY, AND STATE: 5100 O'Byrnes Ferry Road
(BUSINESS) Jamestown, CA 95327**

MANNER OF SERVICE:

Personal Service - By personally delivering copies.

Beverly Monaghan
Registered California process server.
County: Two Lummel
Registration No. 13
Los Angeles Legal Service
2107-D West Commonwealth Ave., #
380
Alhambra, CA 91803
(626) 289-0179

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on October 30, 2007 at Alhambra, California.

Signature: *Beverly Monaghan*

PROOF OF SERVICE

Order# 52329/BProof1

§2(a)(23)(New July 1, 1987)

